

286923467

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
SCHUYLKILL DIVISION

PHILBERT COLE, PRO SE

Plaintiff,

Case No. T.B.A.

vs.

1:21-CV-0193

SCOTT FINLEY, WARDEN

F.C.I. SCHUYLKILL

Respondent

FILED
SCRANTON

FEB 03 2021

PER

DEPUTY CLERK

MEMORANDUM OF LAW IN SUPPORT
OF COMBINED MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Comes Now, Philbert Cole, Pro Se, the plaintiff, and hereby
respectfully moves this court pursuant to Rule 65 of the Federal
Rules of Civil Procedure.

ARGUMENT

THE PLAINTIFF IS ENTITLED TO A
TEMPORARY RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION

A

DELETED
NOTED
DELETED
DELETED

286923467



Philbert A. Cole III
Philbert A. Cole III
Philbert A. Cole III

A. The Plaintiff is Threatened With Irreparable Harm.

The Plaintiff can be heard on a motion for a preliminary injunction. In particular, as shown in the attached Declaration In Support of Plaintiff's Motion For a Temporary Restraining Order and Preliminary Injunction addressing the harrassment and Threatening conduct of staff here at FCI Schuylkill towards the Plaintiff causing undue hardship and irreparable injury beginning on or about November 9th 2020 stemming from a respectful notice to staff. See Exhibit "A."

B. The Balance of Hardships Favors the Plaintiff.

The continuous harrassment from staff, specifically (SIS) [REDACTED] and Correctional Officer D. Campbell, as well as threats will inflict undue hardship upon plaintiff.

III
Phillbert A. Cole



286923467
10/1/2021

11

Relief Sought

To issue a temporary restraining order pending a hearing and determination of plaintiff's motion for a preliminary injunction. The restraining order sought will restrain defendant Warden Scott Finley from allowing staff to harass, threaten, and use disrespectful, abusive, and obscene language towards Plaintiff.

Grounds For Relief

It is essential that the court issue the requested temporary restraining order to prevent immediate and future irreparable harm and injury because the potential injury to the defendant by the temporary restraining order could not possibly counter-balance the irreparable injury to the plaintiff if the defendant's proposed and intended conduct is not restrained

Philbert A. Cole
///

FORMER / USA



286923467

286923467

because as shown in the supporting declaration of Philbert Cole.

In light of the fact the plaintiff is an indigent federal prisoner and unable to post security, he respectfully asks the court to employ its discretion and excuse plaintiff from posting security.

Elliott v. Kieseewetter, 98 F.3d 47, 60 (3d Cir. 1996)

(stating that district courts have the discretion to waive bond requirement contained in Rule 65(c) of the Federal Rules of Civil Procedure if "the balance of the equities weighs overwhelming in favor of the

286923467



FOREVER / USA

Philbert A. Cole
III

party seeking the injunction"). See Molton Co. v.

F

Eagle-Pitcher Industries, Inc., 55 F.3d 1171, 1176

(6th Cir. 1995).

Supporting Material

This motion is based on this document and attached

Exhibit A and whatever argument and/or evidence that

may be presented at the hearing of this motion.

CONCLUSION

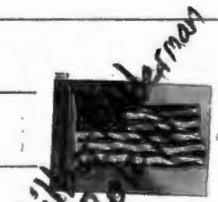
For the foregoing reasons, the court should grant

the motion in its entirety.

Done this 28 day of January 2021

Respectfully submitted
Phibert Cole

286923467



FOREVER / USA

Philbert A. Cole

EXHIBIT

A

NOTICE

On March 23, 1992, the United States Supreme Court affirmed the fact that prison guards and officials can be held personally liable for retaliatory or harassment searches or searches leaving an inmate's cell in disarray. See *Scher v. Engelke*, 943 F.2d 921 (8th Cir. 1991), cert. denied, - U.S. -, 112 S.Ct. 1516, 117 L.ed 652 (1992). Scher held that the scope of Eighth Amendment Protection is broader than mere infliction of physical pain.

PRISON GUARDS AND OFFICIALS

You have now been given notice of clearly established law and Constitutional Rights. Retaliation and Harassment is Illegal! Respect and professionalism is required. After your shake-down of this cell, please leave it in the condition you found it.

Best Regards

Philbert Cole

PHILBERT COLE 49616048
FBI Schuylkill
P.O. Box 700
Minersville, PA 17954



FOREVER / USA



FOREVER / USA

JAN 25 2021

RECEIVED
SCRANTON
FEB 03 2021
LEGAL MAIL

PER EP
DEPUTY CLERK

Clerk of Courts
United States District Court
Middle District of Pennsylvania
N. Washington Avenue
P.O. Box 1148
Scranton, PA 18501

1850131148 B099

